

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.589 of 2003 with
FAO(MVA) No.215 of 2004

Judgement reserved on: 12.7.2007

Date of decision: 20.8.2007.

1. FAO(MVA) No.589 of 2003

National Fertilizers Ltd. And another Appellants
Vs.
Kulwinder Kaur and others Respondents.

2. FAO No.215 of 2004

Kulwinder Kaur and others Appellants
Vs.
National Fertilizers Ltd. And another Respondents

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No.

For the Appellants : ***Mr. Anand Sharma, Advocate.***
In FAO No.589/2003 and for respondents
No.1 & 2 in FAO No.215/2004.

For the Respondents : ***Mr. Rahul Mahajan, Advocate.***
For respondents No 1 to 3 in FAO
No.589/2003 and for appellants in FAO
No.215/2004.

Mr. Neeraj Sharma, Advocate,
For respondent No.4 in FAO No.589/2003
and for respondent No.3 in FAO No.215
/2004.

Mr. B.M. Chauhan, Advocate.
For respondent No.5 in FAO No.589/2003
and for respondent No.4 in FAO
No.215/2004.

Kuldip Singh, Judge.

This judgment shall dispose of FAO(MVA) No.589 of 2003
and FAO No.215 of 2004 as both of them have arisen from award

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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dated 4.9.2003 passed by learned Motor Accident Claims Tribunal, Una in MAC Petition No.54/2000. FAO No.589/2003 has been filed by the owner of the crane against the award fixing liability on the owner and driver, FAO No.215/2004 has been filed by the petitioners for enhancement of compensation. The parties are referred in the same manner as in the impugned award.

2. The brief facts of the case are that Gurdip Singh who was travelling on 23.4.2000 in crane No. MP-08D-3172 which was being driven by Prem Chand respondent No.3 died in an accident involving crane near Gilko Stone Crusher, Bharatgarh, District Ropar, Punjab when crane turned turtle. National Fertilizers Ltd. was the owner of the crane and was impleaded twice as respondent No.1 through Chairman-cum-Managing Director and respondent No.2 through General Manager. The respondent No.4 was the insurer of the crane at the time of the accident.

3. The further case of the petitioners is that Gurdip Singh was earning more than Rs.15,000/- P.M. in Saudi Arabia, Dubai as welder. He had returned from Gulf countries and was working with M/s Mohan Singh Santokh Singh and was running a dairy. The deceased was 35 years of age. The petitioners are the widow and children of the deceased. They filed claim petition claiming Rs.20,00,000/- compensation on account of death of Gurdip Singh.

4. The respondents No.1. and 2 filed common reply and took preliminary objections that M/s. Mohan Singh Santokh Singh, Railway Road, Nangal is necessary party, the petition is bad for mis-joinder of respondents No.1 and 2. On merits, they have stated that crane was

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to be shifted from NFL Nangal to Bhatinda and for this purpose a contract was given to M/s. Mohan Singh Santokh Singh, Railway Road, Nangal. It was agreed that NFL, Nangal would provide the services of one crane operator, helper and contractor would arrange route permit from the authorities for movement of the crane. It has been denied that driver was rash and negligent at the time of accident.

5. The respondent No.3 driver filed separate reply and denied the factum of accident as well as death of Gurdip Singh in the accident, his rest of the reply is similar to the reply of respondents No.1 and 2.

6. The respondent No.4-insurer has contested the petition by filing separate reply and took preliminary objections that the driver who was driving the crane was not holding valid and effective driving licence at the time of accident. The owner and driver have violated the terms and conditions of insurance policy and therefore, insurance company is not liable to pay any compensation. The owner was not holding valid route permit, fitness certificate of the crane at the time of accident. The insurance of the crane was also denied.

7. The learned Tribunal has held that the accident took place due to rash and negligent driving of the crane by respondent No.3 driver as a result of which Gurdip Singh died. It has been held that the respondent No.3 was not holding valid and effective driving licence at the time of accident. The crane was being driven in violation of the terms of the policy but it has been held that there is nothing on record to suggest that the crane was being used without valid route permit or certificate of registration. The Tribunal ultimately awarded a sum of

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Rs.4,18,000/- compensation to the petitioners against respondents No.1 to 3 along with 9% interest from the date of filing of the petition till realization and the compensation amount is to be paid by respondents No.1 to 3 jointly and severally.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the owner of the crane has submitted that the Tribunal has erred in awarding compensation against owner of the crane. He has submitted that M/s. Mohan Singh Santokh Singh firm was awarded contract to shift crane from NFL Nangal to Bhatinda and therefore, liability if any is of M/s. Mohan Singh Santokh Singh firm and not owner of the crane. He has also submitted that even if accident took place due to rash and negligent driving of respondent No.3, driver of the crane in that case also the driver was holding valid and effective driving licence at the time of accident and the crane was insured with respondent No.4, therefore, liability, if any, is of insurance company. In any case excess compensation has been awarded to the claimants. . The counsel for the insurer has submitted that Tribunal has rightly exonerated the insurer. The respondent No.3 driver was not holding valid and effective driving licence at the time of accident. The deceased was gratuitous passenger in the crane. The risk of the deceased was not covered by the policy. There is violation of the policy and therefore, the insurer is not liable to pay any compensation. The counsel for the petitioners has submitted that the Tribunal has awarded less compensation, keeping in view the age of the deceased and his

income. He has urged that petitioners are entitled to enhancement of the compensation.

10. PW-3 Baldev Singh has stated that on 23.4.2000 at about 11 a.m. crane No.3172 was going from Nangal to Ropar in high speed and had turned turtle as a result of which a person had come under the crane and died on the spot. The accident took place due to rash and negligent driving of the driver of the crane. In cross-examination he has stated that Gurdip Singh was taken away from the spot by the driver.

11. PW-6 Kulwinder Kaur has supported her case generally. She has stated that in Saudi Arabia, salary of her husband was Rs.15,000/- per month. After returning from Dubai her husband was working with M/s. Mohan Singh Santokh Singh at Rs.100/- per day and he had also kept 10 buffaloes and used to sell milk. He He was earning Rs.15,000/- per month. On 23.4.2000 her husband died in crane accident. They had kept two servants but she could not tell their names. She had shown her ignorance whether any permission was taken from Nangal Town Planning Authorities to open the dairy.

12. RW-1 Anil Kumar Verma, Senior Manager NFL has proved Ex.RW-1/A to Ex.RW-1/H. In cross examination he has not denied copy of agreement Ex.RB and insurance policy Ex.RG. RW-2 Prem Chand driver has proved driving licence Ex.RW-2/A and has admitted that he was driving crane on 23.4.2000. He has stated that Sukhdev Singh was helper and was sitting on the crane and has also stated that Gurdip Singh was also sitting on the crane. He has admitted that there is no endorsement in the licence to drive crane.

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The registration certificate of the crane is Ex.,RA wherein category of the crane has been recorded as HTV. There is no endorsement of HTV on licence Ex.RW-2/A which Prem Chand, respondent No.2 was holding at the time of accident. In other words respondent No.2,driver was not holding valid and effective licence to drive crane at the time of accident. Once it is proved that Prem Chand was not holding valid and effective driving licence to drive crane at the time of accident than the Tribunal has rightly exonerated insurer to pay compensation to the petitioners. In addition to this Gurdip Singh otherwise was not authorised to travel in the crane. It is not the case of the petitioners that as per insurance policy of the crane, any person could be carried in the crane as passenger on hire or reward. Gurdip Singh was not travelling in the crane as driver or cleaner. The status of Gurdip Singh in the crane at the time of the accident was that of unauthorized passenger. Therefore, insurance company is not liable to pay compensation on account of death of Gurdip Singh who was sitting in the crane as unauthorized passenger at the time of the accident.

13. The learned counsel for the owner of the crane has submitted that there was an agreement in between the owner and M/s Mohan Singh Santokh Singh for shifting the crane from National Fertilizers Ltd. Nangal to Bhatinda and for this purpose contract was given to M/s. Mohan Singh Santokh Singh. According to him the crane was to be shifted by M/s. Mohan Singh Santokh Singh as per agreement Ex.RB. He has relied Para 5.01 of Ex.RB and has submitted that in case of mishap of the driver/operator/worker deputed to work with the crane then the contractor shall be liable for the same.

The owner of the crane has not proved that Gurdip Singh was sitting in the crane at the time of accident as driver/operator/worker deputed to work with the crane. The ownership of the crane is not disputed. For the tortious acts of the driver of the crane, owner is liable to pay compensation. The agreement Ex.RB will not come to the rescue of the owner to avoid the payment of compensation to the petitioners. The owner of the crane can not take benefit of Ex.RB to deny payment of compensation to the petitioners on account of death of Gurdip Singh due to rash and negligent driving of the driver of the crane.

14. The accident took place due to rash and negligent driving of respondent No.2 which has been proved by eye witness PW-3 Baldev Singh. The owner has not denied the accident. Devki Nandan constable, Police Post, Bharatgarh, Ropar (Punjab) has proved the rapat dated 23.4.2001 Ex.PW-5/A. The petitioners have also proved post mortem report Ex.PW-6/A which shows that deceased had died in an accident. RW-2 Prem Chand driver has admitted the accident. The counsel appearing on behalf of respondents No.1 and 2 before the Tribunal did not deny the factum of death of Gurdip Singh in accident. The learned counsel for the owner of the crane has argued that negligence of respondent No.2 has not been proved. As per RW-2 Prem Chand driver all of a sudden a cow appeared in front of crane and to save the cow he applied the brakes of crane as a result of which the crane turned turtle. This shows that crane was being driven in rash and negligent manner by the driver. On the basis of material on record, the Tribunal has rightly held that the accident had taken place due to rash and negligent driving of the driver of the crane.

15. There is no evidence that deceased was earning Rs.15,000/- per month. The statement of PW-2 Ajaib Singh that he used to purchase 55-60 Kg. milk daily from Gurdip Singh is not believable. He has not stated at which place deceased Gurdip Singh had opened the dairy. He has not produced any accounts of purchase of milk by him from Gurdip Singh. There is no evidence from where the deceased was arranging feed. PW-6 Kulwinder Kaur widow could not tell the names of two servants who were allegedly employed for attending the dairy. There is no worth believing evidence that deceased was running a dairy. PW-6 Kulwinder Kaur has admitted that at the time of accident the deceased was working as labourer with M/s. Mohan Singh Santokh Singh. In these circumstances it can be safely inferred that deceased was not running a dairy. The Tribunal in the facts and circumstances of the case has rightly assessed the income of deceased Gurdip Singh Rs.3000/- P.M. The dependency of the petitioners has been correctly assessed at Rs.2,000/- per month by the Tribunal but keeping in view the age of Gurdip Singh at the time of his death, the Tribunal has allowed multiplier of 17 on the higher side. In NEW INDIA ASSURANCE CO. LTD. VS. KALPANA (SMT) AND OTHERS (2007) 3 Supreme Court Cases 538, the deceased was 33 years of age and the Hon'ble Supreme Court has applied the multiplier of 13 for awarding compensation. The date of birth of deceased was 1.6.1966 as per certificate Ex.PW-6/A. Thus on the date of accident the deceased was 34 years of age. Therefore, in the present case multiplier of 13 is appropriate multiplier. The petitioners are therefore, entitled to $\text{Rs.2000} \times 12 \times 13 = \text{Rs.3,12,000/-}$

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compensation on account of death of Gurdip Singh. In addition to this the petitioners are also entitled to Rs.20,000/- on account of loss love and affection, Rs.5,000/- on account of funeral expenses of the deceased. The petitioners are thus entitled to total sum of Rs.3,37,000/- on account of death of Gurdip Singh along with 9% per annum interest from the date of filing of the petition i.e. 7.6.2000. The entire compensation along with interest shall be payable by respondent National Fertilizers Ltd. owner of the crane. The compensation amount along with interest shall be apportioned amongst petitioners in the ratio of 50% to petitioner No.1 widow, 20% to petitioner No.2 son and 30% to petitioner No.3 daughter of the deceased.

16. The result of the above discussion is FAO No.589 of 2003 is partly allowed and FAO No.215 of 2004 is dismissed. The Impugned award is modified and an award of Rs.3,37,000/- is passed in favour of the petitioners and against National Fertilizers Ltd. owner of the crane No.MP-08D-3172 along with interest at the rate of 9% per annum from the date of filing of the petition i.e. 7.6.2000 till deposit/payment. The compensation amount along with proportionate interest shall be payable in the ratio of 50% to petitioner No.1 widow, 20% to petitioner No.2 son and 30% to petitioner No.3 daughter of the deceased. The award amount is inclusive of amount, if any, paid/determined under Section 140 of the Act. No costs.

**(Kuldip Singh)
Judge.**

**August 20, 2007
(sks)**